

REMARKS

Entry of this Amendment is proper under 37 CFR §1.116, since no new claims or issues are presented and the Examiner is required to justify on the record that the initial burden of a *prima facie* rejection has been met, given the comments hereinbelow.

Claims 1-21 and 24-33, all of the claims presently pending in the application, stand rejected on prior art grounds.

It is noted that Applicants specifically state that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Claims 1, 3-8, 10-14, 16, 18-21, 24, and 26-31 stand rejected under 35 USC §102(e) as anticipated by US Patent Publication US20020091825 to Shuster. Claims 2, 9, 15, 17, and 25 stand rejected under 35 USC §103(a) as unpatentable over Shuster, further in view of US Patent 6,598,071 to Hayashi et al. Claims 32 and 33 stand rejected under 35 USC §103(a) as unpatentable over Shuster, further in view of Applicants' Admitted Prior Art.

These rejection based on Shuster are respectfully traversed in view of the following discussion.

I. THE CLAIMED INVENTION

Applicants' invention, as disclosed and claimed in independent claim 1, is directed to a method in a computer network of controlling an admittance of requests to at least one processing component. The amount of network traffic is evaluated to determine if the amount exceeds a preset threshold.

If the preset threshold is exceeded, the content of each request is differentiated in to types and the request is admitted only if the differentiated type meets at least one criterion for admission.

The conventional method discussed on pages 1-4 of the specification makes no differentiation of requests based upon a content of the request. Moreover, the current
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content throttler presented as prior art does not first evaluate network traffic to determine whether the content-based throttling should be invoked.

II. THE PRIOR ART REJECTION

The Examiner alleges that Shuster anticipates the present invention as defined by claims 1, 3-8, 10-14, 16, 18-21, 24, and 26-31 and, when modified by at least one of Hayashi or AAPA, renders obvious claims 2, 9, 15, 17, 25, 32, and 33.

However, the prior art evaluation is constrained by the plain meaning of the claim language, as that language would be interpreted by one of ordinary skill in the art.

Applicants submit that, in spite of some similarities between Shuster and the present invention, there are differences that are reflected in the plain meaning of the independent claims.

More specifically, the present invention has a feature defined in independent claim 1 that requires: "... if said amount exceeds said threshold, differentiating a type of said requests based on a content in each request" Shuster fails to satisfy this description, since, as clearly described in Paragraph [0018], the technique in this reference "... provides various methods for distinguishing between files and thus enables classification of any given file by file type.... The file type may be determined when a file is requested for transfer, or by a disk (memory) crawling agent at periodic intervals."

Applicants submit that the plain meaning of the language recited above clearly indicates that Shuster can be reasonably described as classifying file types, but it clearly fails to differentiate requests types. Stated slightly differently, in Shuster, there is no differentiation of the requests into types.

Rather, Shuster accepts all the input requests and then, upon evaluation for the rule sets, determines which type of file is involved. Applicants submit that, to one of ordinary skill in the art, this concept of determining a type of file is entirely different from the present invention in which the requests are differentiated into types.

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Additionally, the final limitation of independent claim 1 requires: "... admitting said each request only if said differentiated type meets at least one criterion for admission." Applicants submit that Shuster fails to satisfy this limitation.

That is, as clearly described in Paragraph [0018], the mechanism in Shuster is: *"The rule set is then applied to control the rate of transmission of the file, or whether to allow transmission of a file at all, depending on its file type and on other parameters such as the bandwidth usage and network conditions."*

Thus, Applicants submit that Shuster clearly fails to satisfy the feature of the present invention in which the incoming request is denied entry if the differentiated type fails to meet the admission criterion.

This feature allows the present invention to filter incoming requests during peak periods by determining whether criteria based on content, such as the non-limiting examples of response time or classification into static/dynamic categories, are additionally met before allowing the request to be admitted. If these criteria are not met, the request is denied entry.

Applicants submit that Shuster does not teach or fairly suggest denying entry of requests that do not satisfy the criteria based on content. Furthermore, since the technique in Shuster differs from that of the claimed invention, Applicants additionally submit that this reference cannot even be used as a primary reference, since modification to deny entry of the requests would change the principle of operation, and such change of principle of operation is precluded by MPEP §2143.01: "THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE."

Hence, turning to the clear language of the claims, there is no teaching or suggestion in Shuster of: "... if said amount exceeds said threshold, differentiating a type of said requests based on a content in each said request; and admitting said each request only if said differentiated type meets at least one criterion for admission", as required by claim 1. The remaining independent claims 20, 26, 30, and 31 have similar language.

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Moreover, Applicants submit that, to one of ordinary skill in the art, the description in Paragraphs [0025] and [0027] of Shuster does not teach or suggest a software plugin module, as required by claims 6 and 28.

Applicants additionally submit that one of ordinary skill in the art would not consider the description at Paragraph [0015] of Shuster as describing a prioritization of requests of the same type, as required by claims 10. This paragraph clearly describes that prioritization is based on type, a concept different that described by the claim that a type has a further priority based on other criteria.

Moreover, relative to claims 12 and 14, Applicants submit that one of ordinary skill in the art would not agree that the description in Paragraphs [0018-0019] reasonably suggests determining a load on a dependee component, since the rules in Shuster are based only on "... bandwidth usage and network conditions".

Relative to the Examiner's proposed modification of Shuster by Hayashi to address claims 2, 9, 15, 17, and 25, Applicants submit that, since Shuster fails to deny entry of requests, it cannot be modified to change its principle of operation. Therefore, Applicants submit that Hayashi cannot be combined with Shuster.

Moreover, it is noted that the Examiner's rationale of providing "... a communication system further able to effectively use portions of the network having low usage rates. (col. 3, lines 19-33)" has nothing to do with the limitation of claims 2 and 15. Additionally, the rejections for claims 9 and 25 fail to address the plain meaning of the claim limitations.

Relative to the rejection for claims 32 and 33, Applicants submit that the rejection currently of record misses the point. These claims describe that, below a threshold value of traffic, the content handler forwards incoming request based on the URL, rather than information content of the request.

That is, even if a Layer 4 Load Balancing component were to be incorporated into Shuster, the resultant combination would not satisfy the plain meaning of these claims in which the URL is used as the distribution criterion below the traffic threshold level and, above the threshold level, information content of the requests are used as the criterion for distribution. As mentioned above, Shuster adopts an entirely different technique in which

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all requests are entered and, upon entry, the file type is determined so that transmission rate is based upon the rule for that file type.

Applicants submit, therefore, that, even if both Shuster and the present invention share the goal of controlling bandwidth, one of ordinary skill in the art would not agree that the respective techniques are the same or even similar.

For the reasons stated above, the claimed invention is fully patentable over Shuster.

Further, the other prior art of record has been reviewed, but it too, even in combination with Shuster, Hayashi, or AAPA, fails to teach or suggest the claimed invention.

III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-21 and 24-33, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.


Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

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The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,


Date: 8/3/04


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CERTIFICATION OF TRANSMISSION

I certify that I transmitted via facsimile to (703) 872-9306 this Amendment under 37 CFR §1.116 to Examiner K. Huynh on August 3, 2004.


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